

UNITED STATES BANKRUPTCY COURT DECISIONS
DISTRICT OF NORTH DAKOTA
AND EIGHTH CIRCUIT COURT OF APPEALS
1979 through November 21, 1989

ABSTENTION

In re Titan Energy, Inc.,
837 F.2d 325 (8th Cir. 1988)

Bankruptcy court had jurisdiction over proceeding brought by debtor's insurer to determine scope of coverage under products liability policies.

In re American Energy,
50 B. R. 175 (Bankr. D.N.D. 1985)

Proceedings based solely on state created contract law, though tangentially related to pending bankruptcy proceedings, are not sufficiently related to bankruptcy proceeding to confer jurisdiction on court.

In re Dakota Grain,
41 B. R. 749 (Bankr. D.N.D. 1984)

Abstention by bankruptcy court is mandatory if the case is based upon a state law claim or cause of action which, though related to a bankruptcy proceeding, did not arise under the Bankruptcy Code or out of a bankruptcy proceeding.

ACCORD AND SATISFACTION

In re Miller, 54 B. R. 710
(Bankr. D.N.D. 1985)

Stipulations between debtor and three creditors did not constitute a novation, but were an accord, satisfaction of which was not accomplished.

In re Hogg, 877 F.2d 691
(8th Cir. 1988)

Bank's acceptance of check from debtors, which included the notation "payment in full to \$375,000.00," was not an accord and satisfaction of additional amount for which debtors were found liable in state court not accomplished.

ADEQUATE PROTECTION

In re Ahlers, 794 F.2d 388
(8th Cir. 1986)

Bankruptcy court may, as condition to maintaining stay of proceedings by creditors against debtors' property, require that debtors furnish adequate protection to secured creditors to protect against further loss to them.

In re Martin, 761 F.2d 472
(8th Cir. 1985)

Court of Appeals sets out factors Bankruptcy Court is to consider when determining whether debtor's replacement of grain collateral in the future will adequately protect the present use of grain reserves; CCC is not exempt from application of 11 U.S.C. § 363.

In re Magnus, 50 B. R. 241
(Bankr. D.N.D. 1985)

Offer to replace mortgage on farmland with lien on used silos did not provide bank with "adequate protection".

In re Glinz, 69 B. R. 916
(Bankr. D.N.D. 1987)

Mortgagee was not entitled to "adequate protection" for decline in collateral value or lost opportunity

cost.

ADMINISTRATIVE EXPENSES

In re Mutschler, 45 B. R. 494
(Bankr. D.N.D. 1984)

Amount of creditor's loss following debtor's default on adequate protection stipulation treated as superpriority administrative expense.

In re Daig Corp., 799 F.2d 1251
(8th Cir. 1986)

Denial of any compensation to management consulting firm beyond that which it had already received from Chapter 11 debtor was not abuse of discretion.

In re Dakota Lay'd Eggs,
68 B. R. 975 (Bankr. D.N.D.1987)

Gap creditors' claims would not be accorded administrative expense status.

In re Flight Transp. Corp. Securities Litigation,
874 F.2d 576 (8th Cir. 1989)

Indenture trustee that fulfilled its obligations under the Indenture Trustee Act did not, on that basis alone, make a "substantial contribution" in reorganization case for purposes of recovery of administrative expenses.

APPEAL

In re Martin, 761 F.2d 472
(8th Cir. 1985)

Bankruptcy matter in which debtor sought to sell grain and use proceeds to finance continued farming operations was remanded for further analysis in view of bankruptcy

court's failure to consider value of creditor's security interest and to identify risks to creditor's value associated with planting and harvesting of crop not yet in existence.

In re Turner, No. 84-2264
(8th Cir. 1985)
Decisions without published opinions

Matter (appealed from D.N.D. 43 B.R. 752) is remanded by Court of Appeals.

In re Vekco, 792 F.2d 744
(8th Cir. 1986)

District court decision reversing final order of bankruptcy court and remanding case for further proceedings was not final decision for purposes of appellate jurisdiction.

In re Flom, 814 F.2d 558
(8th Cir. 1987)

Debtor's appeal to district court from bankruptcy judge's refusal to rule on pro se motions in connection with exempt real estate was not an appeal from a bankruptcy court order and, thus, was not an appeal within statute limiting district court's jurisdiction to review final judgments, orders and decrees of bankruptcy court.

In re Van Iperen, 819 F.2d 189
(8th Cir. 1987)

Where collateral had passed into hands of third parties, appeal based on claim that property was exempt was moot.

In re Ewing, 852 F.2d 1057

By virtue of terms of

(8th Cir. 1988)

settlement reached pending appeal of Bankruptcy Court finding that vehicle was property of estate, appeal could not be reinstated upon failure of settlement agreement to be consummated.

Moore v. Hogan, 851 F.2d 1125
(8th Cir. 1988)

Motion for extension of time in which to file appeal from Bankruptcy Court order, filed on 21st day after expiration of time for filing notice of appeal, was untimely.

In re Schneider, 873 F.2d 1155
(8th Cir. 1989)

District court decision, remanding case to bankruptcy court with instruction to determine proper fixed discount rate to be applied to creditor's secured claim, was not a final and appealable order.

In re Apex Oil Co., 884 F.2d 343
(8th Cir. 1989)

Failure to present arguments to bankruptcy court and incomplete record precluded appellate review of bankruptcy court order, and stay accordingly be temporarily affirmed pending further development of the record.

ATTORNEY AND CLIENT

U. S. v. Vandrovec, 76 B. R. 725
(Bankr. D.N.D. 1987)

Indigent debtor was not entitled to appointment of counsel on appeal from order holding that criminal restitution obligation was

not discharged.

Jensen v. Federal Land Bank
of Omaha, 882 F.2d 340
(8th Cir. 1989)

Attorney was entitled to notice and hearing before he could be sanctioned for filing Chapter 12 petition in bad faith; mere existence of Rule 9011, the bankruptcy equivalent of Rule 11, did not satisfy notice requirement.

ATTORNEYS

In re Reinhardt, 81 B. R. 565
(Bankr. D.N.D. 1988)

Law firm's attorney's lien in judgment proceeds predated interest of trustee and was paramount thereto.

ATTORNEYS FEES

Lavender v. Wood Law Firm,
785 F.2d 247 (8th Cir. 1986)

Law firm was properly required to reimburse estate for fees received without prior court approval.

In re Pierce, 809 F.2d 1356
(8th Cir. 1987)

Under Minnesota law, attorney failed to perfect lien for prepetition services rendered to debtors and, thus, lien was avoidable.

In re Stauffer Seeds, Inc.,
817 F.2d 47 (8th Cir. 1987)

Fee award should include recovery for hours reasonably spent by counsel in seeking discovery sanctions.

In re Arkansas Communities, Inc.,
827 F.2d 1219 (8th Cir. 1987)

Even though not an Article III court, bankruptcy court had jurisdiction to assess attorney fees as a sanction against attorneys

who repeatedly and in bad faith objected to appointment of trustee and law firm.

ATTORNEYS-REPRESENTATION AND COMPENSATION

In re Wolsky, 35 B. R. 481
(Bankr. D.N.D. 1983)

Requirement for court approved representation.

In re Glinz, 36 B. R. 17
(Bankr. D.N.D. 1983)

Appropriateness of nunc pro tunc order approving representation.

In re Mid-State Oil Co.,
35 B. R. 441 (Bankr. D.N.D. 1983)

Availability of enhanced compensation.

In re Garnas, 40 B. R. 140
(Bankr. D.N.D. 1984)

Amount of compensation approved must correspond to benefit representation conferred.

In re Barth, 37 B. R. 357
(Bankr. D.N.D. 1984)

Award of attorney's fees in divorce action determined to be in the nature of an award of support.

AUTOMATIC STAY - RELIEF FROM

In re Schock, 37 B. R. 399
(Bankr. D.N.D. 1984)

Relief from stay not necessary to obtain dissolution of marriage during pendency of bankruptcy proceeding.

In re Thomas, 38 B. R. 50
(Bankr. D.N.D. 1983)

Relief from stay inappropriate where creditor authorized debtor's disposing of collateral.

In re Pond, 43 B. R. 522
(Bankr. D.N.D. 1984)

Mortgagee entitled to relief from automatic stay with regard to

	debtors' farm property where the existing equity cushion did not represent adequate protection since the property taxes remained unpaid and land values in the area were decreasing.
<u>In re Martinson</u> , 26 B. R. 648 (D.N.D. 1983) rev'd 731 F.2d 543 (8th Cir. 1984)	Automatic stay does not toll running of redemption period.
<u>In re Hutton</u> , 45 B. R. 558 (Bankr. D.N.D. 1984)	Mortgagees of debtors' farm property were entitled to relief from automatic stay.
<u>In re Galvin</u> , 39 B. R. 1016 (Bankr. D.N.D. 1984)	Relief from stay allowed where debtor had no equity and made no offer of adequate protection.
<u>In re Wolsky</u> , 46 B. R. 262 (Bankr. D.N.D. 1984)	Automatic stay would be continued against lender subject to certain conditions to assure adequate protection for lender.
<u>State of Mo. v. U. S. Bankruptcy Court</u> , 647 F.2d 768 (8th Cir. 1981)	Interest of bankrupt grain warehouse in stored grain were sufficient to trigger preliminary jurisdiction over property in bankruptcy court.
<u>NLRB v. Superior Forwarding</u> 762 F.2d 695 (8th Cir. 1985)	Bankruptcy court may enjoin NLRB proceedings to determine whether alleged unfair labor practices stem from debtor's rejection of modification of

collective bargaining agreement.

AUTOMATIC STAY - VIOLATION OF

In re Welch Rathole, 35 B. R. 503
(Bankr. D.N.D. 1983)

Damages not awarded where loss of business was speculative.

AVOIDABLE TRANSFERS

In re Hulm, 45 B. R. 523
(Bankr. D.N.D. 1984)

Sale price paid by mortgagee at judicial foreclosure was not reasonably equivalent value.

In re Vedaa, 49 B. R. 409
(Bankr. D.N.D. 1985)

Trustee was awarded property subject to avoidable transfer rather than value of property as requested by trustee.

CASH COLLATERAL - USE OF

In re Nikolaisen, 38 B. R. 267
(Bankr. D.N.D. 1984)

Interest in crops to be grown is not adequate protection for debtors' present use of collateral.

In re Berg, 42 B. R. 335
(D.N.D. 1984)

Debtor's offer of lien on crop contemplated to be grown in 1984, plus assignment of federal crop insurance proceeds was not adequate protection for creditor with respect to stored grain which was sealed under lien of creditor.

In re Martin, 761 F.2d 472
(8th Cir. 1985)

Court of Appeals sets out factors Bankruptcy Court is to consider when determining whether

debtor's replacement of grain collateral in the future will adequately protect the present use of grain reserves; CCC is not exempt from application of 11 U.S.C. § 363.

In re Bohne, 57 B. R. 461
(Bankr. D.N.D. 1985)

Post petition calves could not serve as adequate protection so as to enable debtor to use cash collateral from sale of prepetition livestock.

CHAPTER 11

In re Olsen, 861 F.2d 188
(8th Cir. 1989)

Chapter 11 debtors' confirmed plan was not "substantially consummated" so as to preclude Bankruptcy Court from authorizing a change in the plan.

In re Blankemeyer, 861 F.2d 192
(8th Cir. 1989)

Chapter 11 plan which proposed to pay unsecured portion of creditor's claim over a 20-year period without interest did not provide creditor with property equal to amount of claim and could not be confirmed under "cramdown" provisions.

In re Kvamme, 93 B. R. 698
(Bankr. D.N.D. 1988)

Chapter 11 plan which failed to adequately treat secured creditors section

1111(b) election could not be confirmed.

In re Wandler, 77 B. R. 728
(Bankr. D.N.D. 1987)

Collateral valued at approximately four percent of \$390,000 claim was of "inconsequential value," and creditor thus could not elect to have claim treated as fully secured.

CHAPTER 12 - SEE FARMERS

CHAPTER 13

In re Lyon, 92 B. R. 901
(Bankr. D.N.D. 1989)

Chapter 13 debtor's right to cure default in federal mortgage ended with foreclosure sale which, under North Dakota law, extinguished mortgage contract.

In re Russell, 93 B. R. 703
(Bankr. D.N.D. 1988)

Allowed amount of claim secured only by Chapter 13 debtors' principal residence is balance owing on debt without regard to value of collateral.

In re Terry, 630 F.2d 634
(8th Cir. 1980)

Chapter 13 plan to pay nothing to creditors did not meet statutory requirement that plan be proposed in good faith.

In re Estus, 695 F.2d 311
(8th Cir. 1982)

Good faith requirement does not impose rigid and unyielding requirement of substantial payment to unsecured creditors; court set forth factors in determining whether Chapter 13 plan is proposed

in good faith.

In re LeMaire, 883 F.2d 1373
(8th Cir. 1989)

Determination that debtor proposed Chapter 13 plan in good faith was not clearly erroneous, and thus civil judgment owed to assault victim by debtor was dischargeable. Whether a debt otherwise nondischargeable under 523(a)(6) is dischargeable under ch. 13 § 1328(a).

Education Assistance Corp. v. Zellner, 827 F.2d 1222
(8th Cir. 1987)

Chapter 13 plan providing for percentage repayment and partial discharge of student loan, rather than for curing of default, did not fall within long-term debt exception to discharge.

In re Briggs, 25 B. R. 317
(Bankr. D.N.D. 1982)

Deacceleration of mortgage debt permitted.

In re Faaland, 37 B. R. 407
(Bankr. D.N.D. 1984)

Trustee in Chapter 13 proceeding has standing as interested party.

In re Mielke, 39 B. R. 556
(Bankr. D.N.D. 1984)

Requirement of fair and equitable treatment for confirmation of Chapter 13 Plan.

CIVIL RIGHTS

EEOC v. Rath Packing Co.,
787 F.2d 318 (8th Cir. 1986)

Automatic stay provision of Bankruptcy Code did not apply to Title VII action brought against debtor by EEOC.

COMPENSATION

In re Endeco, Inc., 1 B. R. 64

Trustee who embezzled

(Bankr. D.N.D. 1979)

from the bankruptcy estate was denied fees and expenses and required to return fees already approved.

CONSTITUTIONAL LAW

Hubbard v. Fleet Mortg. Co.,
810 F.2d 778 (8th Cir. 1987)

District court judgment, which cancelled mortgage debt and imposed penalty of over \$7,000 for mortgagee's knowing violation of bankruptcy court orders, did not deprive mortgagee of property without due process.

CONTRACTS

In re Speck, 798 F.2d 279
(8th Cir. 1986)

Contract for deed was an "executory contract", rather than financing device to be treated as secured debt in reorganization plan, and needed to be accepted or rejected by debtors.

In re Faiman, 70 B. R. 74
(Bankr. D.N.D. 1987)

Contract for deed for purchase of real property is not "executory contract" under North Dakota law and debtor cannot be compelled to assume or reject purchaser's interest.

Brown v. First National Bank in Lenox, 844 F.2d 580 (8th Cir. 1988)

Iowa contract for deed was an "executory contract," rather than a "lien", which debtors had to assume or reject.

CONVERSION OF CASE

Rudd v. Laughlin, 866 F.2d 1040
(8th Cir. 1989)

Debtors' ineligibility for Chapter 13 relief did not deprive Bankruptcy Court of jurisdiction to convert debtors' Chapter 13 to a case under Chapter 7.

In re Tomlin Farms, Inc.,
68 B. R. 41 (Bankr.D.N.D. 1987)

Chapter 11 cases which were pending on effective date of statute creating Chapter 12 could not be converted to Chapter 12.

In re Hoggarth, 78 B. R. 1000
(Bankr. D.N.D. 1987)

Conversion of Chapter 11 to Chapter 7 commences preference period against post-confirmation transfers of nonplan property to nonplan creditors.

CORPORATIONS

In re Haugen Const. Services, Inc.,
104 B. R. 1013 (Bankr. D.N.D. 1989)

Corporate debtor's creditors were entitled to pierce corporate veil.

In re Ozark Restaurant Equipment Co., Inc., 816 F.2d 1222
(8th Cir. 1987)

Chapter 7 trustee did not have standing to assert, on behalf of debtor corporation's creditors, an alter ego action against principals of the corporation.

COURTS

Dennis v. A. H. Robins, Co., Inc., 860 F.2d 871
(8th Cir. 1989)

Bankruptcy court lacked power to preclude another court from dismissing case on its docket or to affect handling of case in a manner not inconsistent with purpose

of automatic stay.

Mangan v. Cullen, 870 F.2d 1396
(8th Cir. 1989)

State judicial district administrator had qualified immunity with respect to official court reporter's claim that administrator violated Bankruptcy Code's antidiscrimination provision by refusing to raise reporter's salary.

In re Easton, 882 F.2d 312
(8th Cir. 1989)

Order orally confirming

Chapter 12 plan, provided certain amendments were made, impliedly barred creditor from proceeding with sheriff's sale, such that court could set aside the sale once amendments were filed and a written confirmation order was entered.

In re Borchardt, 803 F.2d 948
(8th Cir. 1986)

When debtors attempted to bring matter of removal of state foreclosure proceeding back to bankruptcy court for second time, district court properly held that it would not rehear matter and would summarily remand to state court.

In re Dogpatch U.S.A.,
810 F.2d 782 (8th Cir. 1987)

Counterclaim and third-party claim were related to case under Chapter 11 and were within jurisdiction of bankruptcy court.

In re American Energy, Inc.,
49 B. R. 420 (Bankr. D.N.D. 1985)

Request that court establish or fix character of grain grower contracts had no basis under bankruptcy statutes.

In re Alexander, 49 B. R. 733
(Bankr. D.N.D. 1985)

Bankruptcy court lacked jurisdiction over private lien priority dispute which did not affect debtor or property of estate.

In re American Energy, Inc.,
50 B. R. 175 (Bankr. D.N.D. 1985)

Abstention by bankruptcy court was mandated for incidentally-related case based on state law.

In re Schuler, 45 B. R. 684
(Bankr. D.N.D. 1985)

State court case had to first be removed to District Court, then referred to Bankruptcy Court.

In re Yagow, 53 B. R. 737
(Bankr. D.N.D. 1985)

Debtors' counterclaim against creditor for breach of financing commitment was not within jurisdiction of the bankruptcy court.

CRAM DOWN

In re Yagow, 60 B. R. 543
(Bankr. D.N.D. 1986)

Requirements for cram down over objecting creditors were met.

CRIMINAL LAW

In re U. S. v. Brimberry,
779 F.2d 1339 (8th Cir. 1985)

Venue for bankruptcy fraud proceeding existed in district where liquidation proceeding was located.

DAMAGES

In re Ketelsen,
880 F.2d 990 (8th Cir. 1989)

Although Farmers Home Administration's violation of stay was willful, punitive damages were not justified.

DEBT ADJUSTMENTS

In re Bigalk, 813 F.2d 189
(8th Cir. 1987)

Chapter 13 petition presented within 180 days of voluntary dismissal of prior Chapter 13 petition should not have been accepted for filing and bankruptcy court properly dismissed it.

DISCHARGE

In re Boll, 82 B. R. 107
(Bankr. D.N.D. 1988)

Debtor's guilty plea to charge of willfully making false statement established each element necessary to finding of nondischargeability.

In re Dallam, 850 F.2d 446
(8th Cir. 1988)

Debtor contractor's affidavit to title insurer, indicating that persons who had furnished services, labor or material used in construction had been paid in full, constituted an actionable false representation warranting denial of discharge to the debtor.

In re Lembke, 93 B. R. 701
(Bankr. D.N.D. 1988)

Discharge injunction did not bar postdischarge continuation of state court personal injury action in which debtor was codefendant.

In re Belfry, 862 F.2d 661
(8th Cir. 1988)

Creditor's "understanding" that debtor would use money to restore car was insufficient to establish embezzlement exception to discharge for debt arising from debtor's use of the money for purposes unrelated to the

In re Erdman, 96 B. R. 978
(Bankr. D.N.D. 1988)

restoration.

Clear and convincing proof established that debtor transferred, concealed, and converted assets with the intent to defraud required for denial of discharge.

Matter of Hartley,
869 F.2d 394 (8th Cir. 1989)

Debtor's act of throwing lighted firecracker into confined area where gasoline fumes were known to be present, for the purpose of "scaring" former employee, did not constitute willful and malicious injury such as to render \$1,000,000 judgment against debtor nondischargeable, absent proof that the debtor intended to cause explosion and fire.

In re Andrews, 661 F.2d 702
(8th Cir. 1981)

Circuit employs mechanical test for student loans.

In re Hanna, 873 F.2d 829
(8th Cir. 1989)

Postpetition interest and penalties on unpaid federal and state income taxes were nondischargeable.

In re Lunday, 100 B. R. 501,
(Bankr. D.N.D. 1989).

Dishonesty of debtors in completing schedules and responding to questions at creditors' meeting warranted denial of discharge.

In re Johnson, 880 F.2d 78
(8th Cir. 1989)

Debtor's prebankruptcy conversion of property to homestead property did not in itself establish fraud so as to defeat his discharge.

In re Garner, 881 F.2d 579
(8th Cir. 1989)

Debtor was not estopped from contesting dischargeability of judgment debt by state court determination of fraud, in that the state court finding was based on preponderance of evidence, while fraud in a dischargeability proceeding must be established by clear and convincing evidence.

In re Phillips, 882 F.2d 302
(8th Cir. 1989)

Although debtors acted willfully when they did not repay bank immediately or at least pay over amount remaining from funds represented by check once they discovered check had been erroneously deposited, there was no malice, and debt on guarantees was thus dischargeable.

In re Long, 774 F.2d 875
(8th Cir. 1985)

Guarantor-president's willful breaking of security agreement with creditor was not "malicious conversion" so as to preclude discharge.

In re F & M Marquette Nat. Bank v. Richards, 780 F.2d 24
(8th Cir. 1985)

Conversion of case from Chapter 11 to Chapter 7 generated new time period for filing dischargeability complaint.

In re Clark, 50 B. R. 122
(Bankr. D.N.D. 1985)

Debtor was not discharged from debt for willful and malicious conversion of secured potato crop.

In re Williston Co-op Credit Union v. Horob, 54 B. R. 693
(Bankr. D.N.D. 1985)

Dischargeability complaint would be deemed to have been filed within 60 day

In re Binder, 54 B. R. 736
(Bankr. D.N.D. 1985)

In re Roberts, 54 B. R. 765
(Bankr. D.N.D. 1985)

In re Perrin, 55 B. R. 401
(Bankr. D.N.D. 1985)

In re Erickson, 52 B. R. 154
(Bankr. D.N.D. 1985)

In re Hunter, 771 F.2d 1126
(8th Cir. 1985)

In re Hunter, 52 B. R. 912
(Bankr. D.N.D. 1984)

In re Jenkins, 61 B. R. 30
(Bankr. D.N.D. 1986)

deadline.

Debtor was entitled to discharge of student loans on basis of undue hardship.

Creditor did not prove reliance on false financial statement, and therefore loan was not excepted from discharge.

Complaint seeking determination that debt was nondischargeable was not timely.

Debtor's student loan obligation was nondischargeable on basis of her claim of undue hardship.

Ancillary obligations consisting of attorney fees, interest and costs relating to pre-petition mortgage foreclosure could be recovered by creditor to extent those charges were ancillary to that portion of underlying indebtedness deemed nondischargeable.

\$12,000 loan that formed basis of mortgage was dischargeable.

Debtor's issuance of checks was not implied representation that he had sufficient funds to honor checks for purpose of exception to discharge.

In re Yagow, 61 B. R. 109
(Bankr. D.N.D. 1986)

Debtor's breach of presentment warranties under North Dakota law constituted fraud excepting resulting debts from discharge.

Cassidy v. Minihan, 794 F.2d 340
(8th Cir. 1986)

Judgment for personal injury damages resulting from debtor's operation of automobile while under the influence of alcohol was not a debt arising from "willful and malicious injury" and thus was dischargeable.

Draper v. Draper,
790 F.2d 52 (8th Cir. 1986)

Husband's obligations under divorce settlement for support, education, medical and dental expenses of children were non-dischargeable.

McCormick v. Security State Bank,
822 F.2d 806 (8th Cir. 1987)

Debtor's lying to bank concerning his inability to make payment on note manifested intent to hinder or delay creditor, warranting denial of discharge.

In re Orphanq,
827 F.2d 340 (8th Cir. 1987)

Finding that debtor made fraudulent misrepresentation to creditor relied thereon in lending debtor \$90,000 rendered debt nondischargeable.

Matter of Van Horne, 823 F.2d 1285
(8th Cir. 1987)

Debtor's intent to divorce lender's daughter constituted a "material fact" whose nondisclosure rendered the debtor's obligation to lender on renewal

note nondischargeable in
bankruptcy.

DISMISSAL OF BANKRUPTCY PROCEEDINGS

In re Faaland, 37 B. R. 407
(Bankr. D.N.D. 1984)

Trustee has standing to
seek dismissal of
Chapter 13 proceeding.

In re Midwest Processing Co.,
41 B. R. 90 (Bankr. D.N.D. 1984)

Appropriateness of
dismissal of
involuntary proceeding
in face of workout
proposals.

In re Witkowski, 41 B. R. 723
(Bankr. D.N.D. 1984)

Dismissal of reorgan-
ization warranted when
tools of reorganization
effort are abandoned
and operation has
continued to experience
financial losses.

In re Mid-Valley Aggregates,
Inc., 49 B. R. 498
(Bankr. D.N.D. 1985)

Grounds for dismissal
of Chapter 11 proceeding
were not demonstrated.

In re Galvin, 49 B. R. 665
(Bankr. D.N.D. 1985)

Sufficient cause
existed to dismiss
Chapter 11 case which
had been pending for over
14 months.

Basin Elec. Power Co-op v.
Midwest Processing Co.
769 F.2d 483 (8th Cir. 1985)

Involuntary petition
in bankruptcy was filed
in bad faith, warranting
dismissal.

DIVORCE, ALIMONY AND PROPERTY SETTLEMENT

In re McConnell, 88 B. R. 218
(Bankr. D.N.D. 1988)

Divorce decree cash award
was intended as property
division, rather than as
support, and was
accordingly dischargeable.

In re Barth, 37 B. R. 357
(Bankr. D.N.D. 1984)

Award of attorney's fees
construed to be non-

dischargeable award of alimony.

In re Hillius, 38 B. R. 334
(Bankr. D.N.D. 1984)

Factors to consider when determining whether an award is of alimony or a property settlement.

In re Schock, 37 B. R. 399
(Bankr. D.N.D. 1984)

Relief from stay not necessary to complete divorce proceeding.

In re Seablom, 45 B. R. 445
(Bankr. D.N.D. 1984)

Lien created by divorce decree to protect former wife's right to payment for her interest in jointly owned realty was not avoidable by debtor husband.

EMBEZZLEMENT

In re Phillips, 882 F.2d 302
(8th Cir. 1989)

Although debtors acted willfully when they did not repay bank immediately or at least pay over amount remaining from funds represented by check once they discovered check had been erroneously deposited, there was no

malice, and debt on guarantees was thus dischargeable.

In re Endeco, Inc., 1 B. R. 64
(Bankr. D.N.D. 1979)aff'd
675 F.2d 166 (8th Cir. 1982)

Trustee who embezzled from the bankruptcy estate was denied fees and expenses and required to return fees already approved.

EXEMPTIONS

Hanson v. First Nat. Bank in
Brookings, 848 F.2d 866
(8th Cir. 1988)

Bankruptcy Court was not clearly erroneous in finding no fraudulent intent by debtors and in permitting them to claim full exemptions.

Norwest Bank Nebraska, N.A. v.
Tveten, 848 F.2d 871
(8th Cir. 1988)

Bankruptcy Court was not clearly erroneous in inferring fraudulent intent on part of debtor in connection with conversion of approximately \$700,000 of nonexempt property into exempt property on eve of bankruptcy.

Chariton Feed and Grain, Inc.
v. Kinser, 794 F.2d 1329
(8th Cir. 1986)

Debtor was not entitled to transfer homestead exemption from one parcel of land to another when the other parcel was already subject to judgment lien and transfer would prejudice creditor's previously secured rights as judgment creditor.

In re Schmidt, 38 B. R. 380
(Bankr. D.N.D. 1984)

Debtor's right to claim crops received in PIK Program as exempt.

In re Hanson, 41 B. R. 775
(Bankr. D.N.D. 1984)

Right to claim exemptions upon filing of bankruptcy proceeding.

Armstrong v. Lindberg, 735 F.2d 1087
(8th Cir. 1984)

Effective date for exemption claim upon conversion of reorganization to liquidation.

In re Reisnour, 56 B. R. 225
(Bankr. D.N.D. 1985)

Use of state homestead exemption by one joint debtor precludes other from exempting property "in lieu of homestead."

In re Valeu, 57 B. R. 488
(Bankr. D.N.D. 1986)

Debt for purchasers' real estate down payment to debtor was non-dischargeable for fraud.

In re Hexom, 50 B. R. 324
(Bankr. D.N.D. 1984)

North Dakota statute which allowed absolute exemption of surrender value of life policy superseded conflicting provision limiting value.

In re Butts, 45 B. R. 34
(Bankr. D.N.D. 1984)

Conversion of non-exempt assets to exempt assets immediately prior to filing will be set aside on showing of fraud but is not per se fraudulent.

In re Patten, 71 B. R. 574
(Bankr. D.N.D. 1987)

Under North Dakota law, debtors who rented out ground and basement floors of residence could claim homestead exemption in whole.

In re Janz, 74 B. R. 32
(Bankr. D.N.D. 1987)

Joint debtor could not claim exemption in lieu of homestead when other joint debtor had claimed homestead exemption.

In re Harris, 886 F.2d 1011
(8th Cir. 1989)

Debtor's claim for exemption of post-petition, postconversion proceeds from the leasing of estate farmland was disallowed.

In re Thompson, 750 F.2d 828
(8th Cir. 1984)

Provides a general listing of items of property which are within § 522(f)(2)(A).

In re LaFond, 791 F.2d 623
(8th Cir. 1986)

Distinguishes between §522(f)(2)(A) and (F)(2)(B) holding that (f)(2)(A) was intended to provide

avoidance on small personal household items of little

or no value to a creditor;
but that under (f)(2)(B)
implements & tools of trade
may be of more than a
nominal value if they
are reasonably necessary to
debtors ongoing trade or
business.

In re Tofstad, 19 B.R. 34
(N.D. 1982)

352(f) does not create
exemption and is therefore,
narrowly construed.

FALSE FINANCIAL STATEMENTS

In re Mutschler, 45 B. R. 482
(Bankr. D.N.D. 1984)

Debtor's submission of
materially false
financial statements
rendered liability on loan
for purchase of aircraft
nondischargeable in
bankruptcy

FARMERS

In re Paul, 83 B. R. 709
(Bankr. D.N.D. 1988)

Chapter 12 plan which
failed to propose payment
of present value of
creditor's secured claim
could not be confirmed.

In re Dittmer, 82 B. R. 1019
(Bankr. D.N.D. 1988)

Postconfirmation
modification of
Chapter 12 plan had
to be denied as
incapable of cash
flowing.

In re Erickson Partnership,
856 F.2d 1068 (8th Cir. 1988)

Chapter 11 bankruptcy,
already pending at time
Chapter 12 became
effective,
could not be converted to
Chapter 12 case.

Justice v. Valley Nat. Bank,
849 F.2d 1078 (8th Cir. 1988)

Bankruptcy Court may not confirm Chapter 12 plan which allows debtor to pay redemption price over period of time extending beyond that provided by state law.

In re Kingsley, 92 B.R. 898
(Bankr.D.N.D. 1989)

Government farm program payments held to be proceeds of the debtor's crops.

In re Olsen, 861 F.2d 188
(8th Cir. 1989)

Chapter 11 debtors' confirmed plan was not "substantially consummated" so as to preclude Bankruptcy Court from authorizing a change in the plan.

In re Euerle Farms, Inc.,
861 F.2d 1089 (8th Cir. 1988)

Problematic and unconfirmable plan provided cause for dismissal of Chapter 12 petition.

In re Rott, 94 B. R. 163
(Bankr. D.N.D. 1988)

Chapter 12 plan that included "cushion" to absorb unspecified, unexpected expenses did not comply with requirement all debtors' projected disposable income be applied.

In re Hagen, 95 B. R. 708
(Bankr. D.N.D. 1989)

Debtors could not modify confirmed Chapter 12 plan to overcome significant cash shortfalls.

In re Fenske, 96 B. R. 244
(Bankr. D.N.D. 1988)

Chapter 12 plan would be dismissed based on lack of reasonable prospect for confirmable plan.

In re Wargo & Sons, Inc.,
869 F.2d 1129 (8th Cir. 1989)

Corporate debtor did not qualify for Chapter 12 relief, though debtor's stock was owned by single family, in that the farming operation on debtor's land was conducted solely by tenant farmer.

U. S. v. Doud, 869 F.2d 1144
(8th Cir. 1989)

Market rate approach should be used to compute interest rate to be applied to amount of creditor's allowed secured claim in Chapter 12 reorganization involving plan confirmed over objection of secured creditor.

In re Easton, 882 F.2d 312
(8th Cir. 1989)

Order orally confirming Chapter 12 plan, provided certain amendments were made, impliedly barred creditor from proceeding with sheriff's sale, such that court could

set aside the sale once amendments were filed and a written confirmation order was entered.

In re Easton, 883 F.2d 630
(8th Cir. 1989)

Rent debtors received from farmland they rented to neighbor for use in production of crops was not "farm income" which debtors could balance against other income to determine eligibility for Chapter 12 relief, unless debtors played some significant operational role or had an ownership interest in crop production which took place on acreage they rented.

In re Edwardson, 74 B. R. 831
(Bankr. D.N.D. 1987)

12% was appropriate rate of interest to pay bank on secured claim in Chapter 12 plan.

In re Rott, 73 B. R. 366
(Bankr. D.N.D. 1987)

Income derived by debtors from rent of equipment and farmland to their son was farm income for Chapter 12 purposes.

In re Stedman, 72 B. R. 49
(Bankr. D.N.D. 1987)

Value of debtors' stock in Federal Land Bank would not be deducted in determining indebtedness to FLB, for purposes of determining whether aggregate indebtedness exceeded \$1.5 million.

Hanson v. First Bank of South Dakota, N.A.,
828 F.2d 1310 (8th Cir. 1987)

Creditor's opposition to debtors' farm reorganization efforts was not a violation of "good faith" requirement for a creditor filing liquidation plan in farm bankruptcy once the exclusivity period has passed.

In re Hansen, 77 B. R. 722
(Bankr. D.N.D. 1987)

Chapter 12 debtors were entitled to use cash collateral generated from sale of livestock

in which creditor had security interest.

In re Knickerbocker,
827 F.2d 281 (8th Cir. 1987)

Evidence would not support award of damages to debtor-farmers for emotional distress in their action against creditor for intentional interference with farmland

In re Ptacek, 78 B. R. 986
(Bankr. D.N.D. 1987)

lease contracts.

Lien avoidance provision was available in Chapter 12 case to the same extent as in any other Bankruptcy Code chapter.

In re Konzak, 78 B. R. 990
(Bankr. D.N.D. 1987)

Proposed plan was not feasible, given projected yields above ASCS established yields, projected higher market prices for cash crops, and need to use higher discount rate for particular debt.

In re Jenkins, 664 F.2d 184
(8th Cir. 1981)

Notwithstanding debtor's commodities trading losses exceeding \$560,000 in first three months of 1978, debtor was a farmer within meaning of section of Bankruptcy Code excusing farmers from involuntary bankruptcy, where principal part of debtor's income was derived from farming and creditor failed to establish that debtor's trading activities were more than a collateral venture.

FRAUDULENT TRANSFERS

Nebraska State Bank v. Jones,
846 F.2d 477 (8th Cir. 1988)

Creditor lacked standing to bring actions to set aside alleged fraudulent conveyances of Chapter 11 debtors who were acting as debtors-in-possession.

In re Anchorage Marina, Inc.,
93 B. R. 686 (Bankr. D.N.D. 1988)

Payment to company wholly owned by one shareholder of debtor constituted fraudulent transfer.

GARNISHMENT

In re Karlen, 885 F.2d 479
(8th Cir. 1989)

Creditor's garnishment was superior to rights of law firm holding debtor's unencumbered funds, even though, after service of garnishment, the funds were placed in trust.

GUARANTY

Griffin v. Fed Deposit Ins. Corp., 831 F.2d 799
(8th Cir. 1987)

Bank's misleading of guarantor into believing that no partnership debt were included in her son's debts did not entitle her to rescission of guaranty agreement on the basis of fraud.

HOMESTEAD

Stevens v. Pike County Bank,
829 F.2d 693 (8th Cir. 1987)

As regarded spouse's joint petition for relief under Chapter 13 of Bankruptcy Code, either spouse, but not both, was entitled to homestead exemption under Arkansas law.

In re Fandrich, 63 B. R. 250
(Bankr. D.N.D. 1986)

Divorce decree awarding home to debtor's former wife operated to vest wife with exclusive right to declare exemption.

In re Reismour, 49 B. R. 406
(Bankr. D.N.D. 1985)
aff'd 56 B. R. 225 (D.N.D. 1985)

An in lieu of homestead exemption would be disallowed to a North Dakota debtor where that debtor's spouse made a

homestead exemption claim.

HUSBAND AND WIFE

In re Butts, 46 B. R. 292
(Bankr. D.N.D. 1985)

Spouse's interest in marital home preserved under theory of constructive trust.

INJUNCTION

In re Fargo Biltmore Motor Hotel Corporation, 45 B. R. 568
(Bankr. D.N.D. 1984)

Debtor was entitled to injunction to prohibit disposition of property which was subject of judgment debtor was seeking to avoid.

INSTALLMENT CONTRACTS

In re Brower, 104 B. R. 226
(Bankr. D.N.D. 1988)

Lease purchase agreement for dairy cattle constituted a sales transaction rather than a lease.

INTEREST

U. S. v. Doud, 869 F.2d 1144
(8th Cir. 1989)

Market rate approach should be used to compute interest rate to be applied to amount of creditor's allowed secured claim in Chapter 12 reorganization involving plan confirmed over objection of secured creditor.

U. S. v. Neal Pharmacal Co.,
789 F.2d 1283 (8th Cir. 1986)

Record was insufficient to determine prevailing market rate on a loan comparable to that which debtor sought pursuant to

Chapter 11 plan seeking
to defer payment of
I.R.S. priority tax claim.

In re Lawson Square, Inc.,
816 F.2d 1236 (8th Cir. 1987)

There is no legal limit
on interest on loans
secured by a first
lien on residential real
property in Arkansas, so
long as the requirements
of the Depository
Institutions Deregulation
and Monetary Control Act
are met.

INTERNAL REVENUE

A to Z Welding & Mfg. Co.,
Inc. v. U. S., 803 F.2d 932
(8th Cir. 1986)

Anti-Injunction Act
prohibited attempt to bar
IRS from collecting tax
assessed against officers
and shareholders of
corporation
which had filed
Chapter 11
petition, in their
personal capacity.

INVOLUNTARY PROCEEDINGS

In re Midwest Processing Co.,
47 B. R. 903 (D. C. 1984)
aff'd 769 F.2d 483 (8th Cir. 1985)

Involuntary petition
should have been
dismissed for failure
to meet three-creditor
requirement.

In re Midwest Processing Co.,
41 B. R. 90 (Bankr. D.N.D. 1984)

Requirements and burdens
of proof placed upon
petitioning creditors.

Jenkins v. Petitioning Creditor-
Ray E. Friedman,
664 F.2d 184 (8th Cir. 1981).

Court construes alleged
Debtor's status as
farmer.

JUDGMENT

In re Burke, 83 B. R. 716

Judgment entered in state

(Bankr. D.N.D. 1988)

court breach of contract action would not be given collateral estoppel effect in dischargeability proceeding.

Oulman v. Rolling Green, Inc.,
851 F.2d 1032 (8th Cir. 1988)

Res judicata barred debtor-purchasers' action to avoid transfer of property, as any merit which debtors' claims might have had were, or with reasonable diligence could have been, fully litigated in debtors' two prior state court suits relating to same property.

In re Zimmerman, 869 F.2d 1126
(8th Cir. 1989)

Notwithstanding evidence that debtor filed bankruptcy petition in bad faith, bankruptcy court did not abuse its discretion in denying creditor's motion for relief from judgment to revoke discharge and dismiss petition.

In re Design Classics, Inc.,
788 F.2d 1384 (8th Cir. 1986)

Denial of debtor's Rule 60(b) motion for relief from judgment on jurisdictional grounds was not an abuse of discretion.

JURISDICTION

In re Titan Energy, Inc.,
837 F.2d 325 (8th Cir. 1988)

Bankruptcy court had jurisdiction over proceeding brought by debtor's insurer to determine scope of coverage under products liability policies.

In re Cassidy Land & Cattle Co., Inc., 836 F.2d 1130 (8th Cir.

Proceeding initiated by debtor to foreclose upon

1988)

\$2 million note secured by mortgage, which constituted sole asset of bankruptcy estate, was core proceeding over which Bankruptcy Court had jurisdiction to enter final order.

Dennis v. A. H. Robins, Co., Inc., 860 F.2d 871
(8th Cir. 1989)

Bankruptcy court lacked power to preclude another court from dismissing case on its docket or to affect handling of case in a manner not inconsistent with purpose of automatic stay.

Northern Pipeline Const Co. v. Marathon Pipe Line Co.,
102 S. Ct. 2858 (1982)

The Supreme Court held that the Bankruptcy Reform Act's broad grant of jurisdiction to bankruptcy judges, to-wit, "... jurisdiction of all civil proceedings arising under Title 11 or arising in or related to cases under Title 11", violates Article III of the Constitution. The court stayed its judgment until October 4, 1982, to afford Congress an opportunity to reconstitute the bankruptcy courts in accordance with Article III of the Constitution.

Granfinanciera v. Nordberg, 109
S. Ct. 2782 (1989)

The nature of relief sought by bankruptcy trustee-recovery of money payments of ascertained and definite amounts-conclusively demonstrate that course of action was properly characterized as legal rather than equitable, such that

transferees were prima facie entitled to jury trial under Seventh Amendment.

LABOR RELATIONS

Citicorp Indus. Credit, Inc. v. Brock, 107 S. Ct. 2694 (8th Cir. 1987)

Section 15(a)(1) of Fair Labor Standards Act, which prohibits "any person" from introducing into interstate commerce goods produced in violation of minimum wage or overtime provisions, applies to secured creditors who acquire such collateral ("hot goods") pursuant to a security agreement.

LEASE

In re Brower, 104 B. R. 226 (Bankr. D.N.D. 1988)

Lease purchase agreement for dairy cattle constituted a sales transaction rather than a lease.

In re Winckler, 38 B. R. 103 (Bankr. D.N.D. 1984)

Use of term "lease" is not controlling. Agreements for lease of tractors and trailers were lease agreements and not installment contracts.

In re Witkowski, 37 B. R. 352 (Bankr. D.N.D. 1984)

Transaction between debtor and bank pertaining to hog mini-nursery building was a financing agreement and not a lease.

In re Garnas, 38 B. R. 221 (Bankr. D.N.D. 1984)

Termination of executory contract by creditor prohibited in bankruptcy proceeding.

In re Hausauer, 35 B. R. 661
(Bankr. D.N.D. 1983)

Termination of franchise
agreements under N.D.
Cent. Code § 57-07-01.

In re Wild, 50 B. R. 410
(Bankr. D.N.D. 1985)

Under North Dakota law
farm lessor lost
ownership rights in
one-third of crop by
failing to file lease.

LIENS

In re Peterson, 80 B. R. 167
(Bankr. D.N.D. 1987)

Docketed judgment was
ineffective as against
trustee's avoidance powers
as bona fide purchaser of
debtor's homestead.

In re Kingsley, 92 B.R. 898
(D.N.D. 1987)

Farm program payments are
crop proceeds and not
"other personal property."
Thus a security interest
taken in payments as well
as crops does not violate
N.D.C.C. § 35-05-04.

In re Kingsley, 865 F.2d 975,
(8th Cir. 1989)

Government deficiency
payments that were part
of federal price support
program were not "proceeds"
of crops and were,
accordingly, not covered
by lender's security
agreement.

In re Thompson, 884 F.2d 1100
(8th Cir. 1989)

Debtors who waived their
right to Minnesota
exemption for their farm
machinery and equipment
by voluntarily encumbering
the property did not lose
their right to avoid the
lien under bankruptcy law.

In re Scherbenske Excavating, Inc.,

Security interest of

38 B. R. 84 (Bankr. D.N.D. 1984)

contractor's creditor attaches to contract rights except those rights earned by contractor's sub-contractor; effect of creditor's interest in property acquired post-petition.

In re Janz, 67 B. R. 553
(Bankr. D.N.D. 1987)

Debtors could avoid bank's nonpurchase-money lien in farming equipment, though the debtors were not engaged in farming on date of petition.

In re Scherbenske, 71 B. R. 403
(Bankr. D.N.D. 1987)

IRS lien was perfected upon filing of notice.

In re Thomas, 38 B. R. 50
(Bankr. D.N.D. 1983)

Determination of interest in milk produced by debtor's operation after bankruptcy filing.

In re Lebus-Albrecht Lumber,
38 B. R. 58 (Bankr. D.N.D. 1984)

Examination of rights in goods delivered under consignment.

In re Heilman, 39 B. R. 492
(Bankr. D.N.D. 1984)

Examination of requirements for perfection of interest in cash funds through garnishment proceedings.

In re Clothes, Inc.,
35 B. R. 487 (Bankr. D.N.D. 1983)
aff'd by unpublished Order of
Dist Ct. dated June 14, 1984

Letters of credit and the Twist Cap rationale.

In re Clothes, Inc.,
40 B. R. 997 (Bankr D.N.D. 1984)

Marshalling of assets not appropriate.

In re Galvin, 39 B. R. 1016
(Bankr. D.N.D. 1984)

Requirements for perfection of interest in grain bins as fixtures.

In re Star Safety, Inc.,
39 B. R. 755 (Bankr. D.N.D. 1984)

Creditor's sale of repossessed property extinguishes its perfected

In re Schmidt, 38 B. R. 380
(Bankr. D.N.D. 1984)

lien in collateral.

Determination of interest in PIK proceeds; discussion of extent of creditors' interest in property acquired by debtor post-petition.

In re Alexander, 39 B. R. 110
(Bankr. D.N.D. 1984)

Sufficiency of financing statement.

In re Alexander, 39 B. R. 107
(Bankr. D.N.D. 1984)

Possessory lien given effect.

In re Glinz, 46 B. R. 266
(Bankr. D.N.D. 1984)

Farm chemical and fertilizer suppliers' statutory liens took precedence over those of bank and government.

In re Yagow, 62 B. R. 73
(Bankr. D.N.D. 1986)

PCA standard form security agreement covering specific crops and other personal property was invalid to create crop lien under North Dakota law.

In re LaFond, 791 F.2d 623
(8th Cir. 1986)

Debtors, who invested over \$20,000.00 in their current farming operations, and continued their bona fide effort to earn a living at farming, were "farmers" for purpose of lien avoidance statute, even though one debtor derived income from outside employment.

LIEN AVOIDANCE

In re Hulm, 738 F.2d 323
(8th Cir. 1984)

Alleged fraudulent transfer.

In re Lebus-Albrecht Lumber,
38 B. R. 58 (Bankr. D.N.D. 1984)

Trustee cannot assert rights of secured creditors

In re Tofstad, 19 B. R. 34
(Bankr. D.N.D. 1982)

when given status as
judicial lien creditor.

In re Schneider, 18 B. R. 274
(Bankr. D.N.D. 1982)

Pickup not tool
of farmhand's trade.

Must take affirmative
action to avoid lien,
merely noting such on
schedules is insufficient.

In re Blair, 18 B. R. 277
(Bankr. D.N.D. 1982)

Oral statements of
finance agent did not
constitute waiver of liens.

In re Thompson, 750 F.2d 628
(8th Cir. 1984)

Provides a general listing
of items of property which
are within § 522(f)(2)(A).

LIMITATION OF ACTIONS

In re Haugen Const. Service,
Inc., 88 B. R. 222 (Bankr. D.N.D.
1988)

Time limit on avoiding
postpetition transfer
commenced to run from
date of transfer rather
than from date of con-
version of case and
appointment of trustee.

In re Missouri River Sand &
Gravel, Inc., 88 B. R. 1006
(Bankr. D.N.D. 1988)

Successor Chapter 7
trustee's actions to
recover postpetition
transfers to secured
creditor were time barred.

LIQUIDATION

In re Walton, 866 F.2d 981
(8th Cir. 1989)

Chapter 7 case was
properly dismissed on
substantial abuse
grounds.

In re Gaukler, 63 B. R. 224
(Bankr. D.N.D. 1986)

Debtors' Chapter 7
petition would not be
dismissed for substantial

In re Flaten, 50 B. R. 186
(Bankr. D.N.D. 1985)

In re Kress, 57 B. R. 874
(Bankr. D.N.D. 1985)

In re Day, 77 B. R. 225
(Bankr. D.N.D. 1987)

In re Dakota Lay'd Eggs,
57 B. R. 648 (Bankr. D.N.D. 1986)

In re Renner, 70 B. R. 27
(Bankr. D.N.D. 1987)

In re Newsom, 69 B. R. 801
(Bankr. D.N.D. 1987)

abuse, though debtors
claimed 10% of income
for religious expenses.

Chapter 7 trustee could
not avoid interests of
vendors in bar and cafe.

Debtor's petition was
subject to dismissal for
substantial abuse of
Chapter 7.

Chapter 7 petition filed
by debtor whose current
monthly income was
sufficient to fund
Chapter 13 plan constituted
"substantial abuse" of
Code.

Debtor, which was involved
in production of eggs,
was not a "farmer" and
thus was subject to
involuntary Chapter 7
proceeding.

Granting debtors relief
under Chapter 7 would
not be substantial
abuse of Bankruptcy Code
in light of anticipated
future medical expense.

Chapter 7 petition of
two debtors, who had
combined annual net
income of nearly
\$34,000.00 and no
dependents, would be
dismissed on ground that
granting relief would
constitute substantial
abuse.

MORTGAGES

Saline State Bank v. Mahlock,
834 F.2d 690 (8th Cir. 1988)

Mortgagee did not have lien in rents and profits from debtors' property until mortgagee's interest was fully perfected by filing petition in bankruptcy court to sequester rents and profits.

In re Lyon, 92 B. R. 901
(Bankr. D.N.D. 1989)

Chapter 13 debtor's right to cure default in federal mortgage ended with foreclosure sale which, under North Dakota law, extinguished mortgage contract.

In re Neideffer, 96 B. R. 241
(Bankr. D.N.D. 1988)

Junior mortgage holder completely unsecured as regards to land was also unsecured as to any interest in rent.

In re Fluge, 57 B. R. 451
(Bankr. D.N.D. 1985)

Mortgagee, by virtue of debtor's assignment of rents and enforcement of such interest, and interest in rents superior to that of trustee.

Garrison v. Great Southwest Inc. Co., 809 F.2d 500
(8th Cir. 1987)

Mortgagee's partial assignment of foreclosure judgment to insurer that had paid mortgagee for fire loss was enforceable against debtors in bankruptcy without their consent or ratification.

In re Martinson, 26 B. R. 648
(D.C.N.D. 1983)

NONDISCHARGEABILITY

In re Decker, 36 B. R. 452
(Bankr. D.N.D. 1983)

Defalcation while acting
in fiduciary capacity.

In re Langer, 12 B. R. 957
(Bankr. D.N.D. 1981)

Examination of willful
and malicious requirement.

In re Fercho, 39 B. R. 764
(Bankr. D.N.D. 1984)

Res judicata and collateral
estoppel.

In re Wightman, 36 B. R. 246
(Bankr. D.N.D. 1984)

Embezzlement; burden of
proof--fair preponderance.

In re Hunter,
36 B. R. 28 (Bankr. D.N.D. 1983)

Fraud and False pretenses;
burden of proof clear
and convincing.

In re Hillius Farms,
38 B. R. 334 (Bankr. D.N.D. 1984)

Requirements of non-
dischargeable award of
alimony or support.

In re Barth, 37 B. R. 357
(Bankr. D.N.D. 1984)

Award of attorney's fees
in divorce proceeding
determined to be non-
dischargeable award of
support.

NOVATION

Hofer v. Merchants State Bank
of Freeman, S. D.,
823 F.2d 271 (8th Cir. 1987)

Renewal notes executed
by Chapter 11 debtor
following husband's
incarceration did not
effect a novation of
prior indebtedness of
debtor and husband
secured by cattle, and
security interest in
cattle attached to
proceeds of cattle sale.

PARTNERSHIP

In re West Tech, Ltd.,
882 F.2d 323 (8th Cir. 1989)

Execution of note by
corporation that was
general partner did not
bind the partnership,
as note was prohibited
under articles of

partnership, lender was on notice that subsidiary of partner was in possible breach of duty, and no other partner had authorized note's execution.

PREFERENCES

In re Ozark Restaurant Equipment Co., Inc., 850 F.2d 342 (8th Cir.

Bank's attempt to establish defense to preference 1988) action was untimely.

In re Bohlen Enterprises, Ltd., 859 F.2d 561 (8th Cir. 1988)

Bank in which funds were deposited less than 90 days before debtor filed for bankruptcy could not exercise right of setoff against the funds, and thereby avoid treatment of transfer as voidable preference, where the deposit was not in ordinary course of business and was for purpose of creating right of setoff.

In re Gilbertson, 90 B. R. 1006 (Bankr. D.N.D. 1988)

Transfer made within 90 days of petition filing pursuant to deferral agreement providing for restructure of debt payment was transfer in the ordinary course of business.

In re Archie Campbell, Inc., 54 B. R. 116 (Bankr. D.N.D. 1985)

It was necessary to determine whether transfer of funds by cashier's check depleted assets of debtor's estate.

In re Archie Campbell, Inc., 45 B. R. 416 (Bankr. D.N.D. 1984)

Bank's issuance of cashier's checks to creditors of debtor were

In re Clothes, Inc., 45 B. R. 419
(Bankr. D.N.D. 1984)

not preferential transfers.

Rent payments were exempt from avoidance in that payments were contemporaneous exchanges.

In re Fargo Biltmore Motor Hotel Corp., 49 B. R. 782
(Bankr. D.N.D. 1985)

Foreclosure of debtor's motel property not avoidable preference.

Brown v. 1st Nat'l Bank of Little Rock,
748 F.2d 490 (1984)

No preference where no transfer of debtor's property.

PRIORITY

In re Jamestown Farmers Elevator, Inc., 49 B. R. 661
(Bankr. D.N.D. 1985)

Holder of warehouse receipts had a higher priority to proceeds from sale of grain than secured creditor.

PROCESS

In re Valeu, 53 B. R. 549
(Bankr. D.N.D. 1985)

Service of Process was improper for failure to mail summons and complaint to debtors in addition to their attorney.

PROOF OF CLAIM

In re Kvamme, 91 B. R. 77
(Bankr. D.N.D. 1988)

Restructuring of distressed loan under the Agricultural Credit Act was not only remedy available to FmHA which could make § 1111(b) election.

In re Haugen Const. Services, Inc., 88 B. R. 214

Facts and circumstances warranted amendment of

(Bankr. D.N.D. 1988)

informal proof of claim
to formal proof of claim.

In re Haugen Const. Services,
Inc., 876 F.2d 681 (8th Cir. 1989).

Judgment creditor's letter
to U.S. trustee, explicitly
stating nature and amount
of its claim against
Chapter 7 debtor, and its
desire to pursue that
claim, constituted a valid
and timely informal claim
which could be amended
after bar date for filing
claims had passed.

In re Brower, 104 B. R. 226
(Bankr. D.N.D. 1988)

Repossession of cattle
which came into debtor's
possession through lease
purchaser agreement that
was sales transaction
under North Dakota law
constituted preferential
transfer.

Matter of Donovan Wire & Iron Co.,
822 F.2d 38 (8th Cir. 1987)

Creditor should have been
permitted to make
untimely amendment to its
proof of claim to include
two additional guaranties
made by Chapter 11 debtor.

Matter of Reserves Development
Corp., 821 F.2d 520
(8th Cir. 1987)

Coal-washing facility was
no longer "property of
the estate" so as to render
automatic stay applicable
to proceedings involving
facility, where secured
creditors, with bankruptcy
court's approval, fore-
closed on facility,
purchased it, and took
legal title.

PROPERTY OF ESTATE

In re NWFX, Inc., 864 F.2d 588,
(8th Cir. 1988)

Grocery store chain which sold debtor's uninsured money orders to customers would be unjustly enriched if it were allowed to retain all proceeds of those orders; thus, an equitable interest equal to the reasonable value of excess benefits that the chain received from its dealings with the debtor constituted property of the estate and was subject to turnover.

In re Swanson, 873 F.2d 1121
(8th Cir. 1989)

Monies held in a state-created teacher's retirement plan became property of respective bankruptcy estates upon filing of petitions in bankruptcy by debtor teachers.

Matter of Newman, 875 F.2d 668
(8th Cir. 1989)

Postpetition transfer by debtor was not a transfer of estate property and, thus, could not be avoided by the trustee.

In re NWFX, Inc., 881 F.2d 530
(8th Cir. 1989)

Refunds to money order purchasers from retailer which acted as agent for debtor in selling the money orders to the public were not property of debtor's estate, and thus not subject to turnover.

In re Brusseau, 57 B. R. 457
(Bankr. D.N.D. 1985)

Debtors' equity in tractor was property of their estate.

In re Koch v. Myrvold,
784 F.2d 862 (8th Cir. 1986)

Property inherited more than 180 days after original Chapter 11

petition was filed was not property of the estate, notwithstanding subsequent conversion of case to Chapter 7.

In re Greiner, 49 B. R. 393
(Bankr. D.N.D. 1985)

Debtor's coast guard pension benefits were not property of debtor's estate.

In re Pigeon, 49 B. R. 657
(Bankr. D.N.D. 1985)

Milk produced by debtors' dairy operation subsequent to filing for bankruptcy relief was "newly-acquired property."

In re Graham, 726 F.2d 1268
(8th Cir. 1984)

Debtor's interest in ERISA pension funds came into bankruptcy estate even though covered by ERISA transfer restrictions. Reversed by Patterson v. Schumate, ___ U.S. ___.

PUNITIVE DAMAGES

Basin Elec Power Co-op v. Midwest Processing Co., 61 B. R. 129
(Bankr. D.N.D. 1986)

Debtor did not demonstrate substantial reason for withdrawing reference of motion for punitive damages to bankruptcy court.

RECLAMATION

Matter of Griffin Retreading Co., 795 F.2d 676 (8th Cir. 1986)

Reclaiming seller which met all tests to assert its rights to reclamation under the Bankruptcy Code was entitled to either administrative expense priority claim or lien securing its claim.

REORGANIZATION

Yell Forestry Products v. First State Bank, 853 F.2d 582 (8th

Bank, the main proponent of Chapter 11 plan that

Cir. 1988)

proposed sale of debtor's entire corporate stock to another plan proponent, had no duty to refer in plan's disclosure statement to debtor's potential EPA liability, and hence was not liable to proponent purchaser for fraud.

In re DeMers, 853 F.2d 605 (8th Cir. 1988)

State law period for redeeming foreclosed-upon realty could not be extended or displaced by Chapter 11 plan, and thus plan proposing installment payments to foreclosing creditor for 20 years could not be confirmed.

In re Wentworth, 83 B. R. 705 (Bankr. D.N.D. 1988)

Chapter 11 petition filed by debtor on eve of creditor's repossession of livestock machinery was filed in "bad faith".

Norwest Bank Worthington v. Ahlers, 108 S. Ct. 963 (8th Cir.

Debtor farmer's promise of future "labor, 1988) experience and expertise" did not permit, over creditors' objections, confirmation of Chapter 11 plan which violated "absolute priority rule".

In re Kvamme, 93 B. R. 698 (Bankr. D.N.D. 1988)

Chapter 11 plan which failed to adequately treat secured creditors section 1111(b) election could not be confirmed.

In re Prines, 867 F.2d 478 (8th Cir. 1989)

Quarterly fees, as imposed in Chapter 11 cases under provision of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act

	of 1986, could be assessed in pending cases in districts participating in the United States Trustee Pilot Program immediately upon the Act's effective date.
<u>In re Pfliger</u> , 57 B. R. 467 (Bankr. D.N.D. 1985)	Creditor could not maintain complaint objecting to discharge where Chapter 11 plan was not liquidating plan.
<u>In re Hoff</u> , 54 B. R. 746 (Bankr. D.N.D. 1985)	Plan was not subject to cram down due to failure to meet feasibility requirement.
<u>In re Webster</u> , 66 B. R. 46 (Bankr. D.N.D. 1986)	Chapter 11 debtors' plan in bifurcating obligation and real estate security was fair to creditor.
<u>In re Rott</u> , 49 B. R. 697 (Bankr. D.N.D. 1985)	Debtors who did not have and would not have means to finance farming operation for another year would have Chapter 11 case dismissed for cause.
<u>In re Eisenbarth</u> , 77 B. R. 228 (Bankr. D.N.D. 1987)	Plan which proposed to pay trade creditors in full but only 10% of Federal Land Bank's unsecured claim discriminated unfairly.
<u>In re Foss</u> , 76 B. R. 719 (Bankr. D.N.D. 1987)	Creditors failed to establish absence of reasonable likelihood of rehabilitation of farmer-debtor at present time.
<u>In re Deile</u> , 50 B. R. 217 (Bankr. D.N.D. 1985)	Second modification of reorganization plan was not workable and would

In re Anderson, 52 B. R. 159
(Bankr. D.N.D. 1985)

In re Hoffman, 52 B. R. 212
(Bankr. D.N.D. 1985)

Wamsqanz v. Boatmen's Bank
of DeSota, 804 F.2d 503
(8th Cir. 1987)

In re Langseth, 70 B. R. 274
(Bankr. D.N.D. 1987)

not be confirmed.

Debtor farmer's second
reorganization plan was
not feasible and would
not be confirmed.

Chapter 11 plan could
not be confirmed through
cram down over objection
of creditor.

Persons not engaged in
business may not seek
relief under Chapter 11.

Debtor farmers failed to
demonstrate "reasonable
likelihood of
rehabilitation", so that
second Chapter 11 plan
would be dismissed.

RES JUDICATA

In re Ewing, 852 F.2d 1057
(8th Cir. 1988)

By virtue of terms of
settlement reached
pending appeal of
Bankruptcy Court finding
that vehicle was property
of estate, appeal could
not be reinstated upon
failure of settlement
agreement to be
consummated.

RESTITUTION

In re Vandrovec, 61 B. R. 191
(Bankr. D.N.D. 1986)

Restitution obligation
arising from conversion
of corn was dischargeable.

But see:

Kelly v. Robinson, 107 S. Ct. 353 (1986)

RULE 11

Jensen v. Federal Land
Bank of Omaha, 882 F.2d 340
(8th Cir. 1989)

Attorney was entitled to notice and hearing before he could be sanctioned for filing Chapter 12 petition in bad faith; mere existence of Rule 9011, the bankruptcy equivalent of Rule 11, did not satisfy notice requirement.

SALES

In re Schauer, 835 F.2d 1222
(8th Cir. 1988)

No equitable considerations would justify voiding of transfer restriction on patronage margin certificates issued to debtor by nonprofit farm cooperative.

SANCTIONS

Jensen v. Federal Land Bank
of Omaha, 882 F.2d 340
(8th Cir. 1989)

Attorney was entitled to notice and hearing before he could be sanctioned for filing Chapter 12 petition in bad faith; mere existence of Rule 9011, the bankruptcy equivalent of Rule 11, did not satisfy notice requirement.

SECURED TRANSACTIONS

In re Hilyard Drilling Co., Inc.,
840 F.2d 596 (8th Cir. 1988)

Correspondence regarding lienholder's extension of credit to debtor did not establish an agreement on lienholder's part to subordinate its interest to that of entity holding first lien at time credit was extended.

In re Kingsley, 92 B.R. 898
(Bankr.D.N.D. 1989)

Government payments were proceeds from

	crops and thus not covered by North Dakota law prohibiting security agreement covering both crops and other personal property.
<u>In re Mack</u> , 93 B. R. 695 (Bankr. D.N.D. 1988)	Under North Dakota law, security agreement with deficient collateral description could not be saved by sufficient description in financing statement.
<u>In re Adam</u> , 96 B. R. 249 (Bankr. D.N.D. 1989)	Prematurely filed continuation statement was ineffective to continue creditor's security interest.
<u>In re Norby</u> , 96 B. R. 988 (Bankr. D.N.D. 1988)	Security agreement relating to specific crops and other personal property could not create security interest in crops.
<u>In re BLT II, Ltd.</u> , 870 F.2d 456 (8th Cir. 1989)	Evidence supported bankruptcy court's finding that secured party unconditionally authorized transfer of liquor license, thereby subordinating security interest in proceeds from sale of the license.
<u>In re Halvorson</u> , 102 B. R. 736 (Bankr. D.N.D. 1989)	Under North Dakota law, trailer seller perfected its security interest by retaining possession of title certificate.
<u>Bank of North Arkansas v. Owens</u> , 884 F.2d 330 (8th Cir. 1989)	Dairy termination payments received by debtor under federal program were not proceeds from sale of dairy herd, for purposes

of agreement giving bank a security interest in the herd.

In re Wolsky, 68 B. R. 526
(Bankr. D.N.D. 1987)

Security agreement did not sufficiently describe debtors' trucks as collateral for creditor to rely on agreement in asserting security interest.

Smith v. Mark Twain Nat. Bank, 805 F.2d 278 (8th Cir. 1987)

Bank had a valid, perfected security interest in certificates of deposit and repurchase agreements pledged by debtor to bank.

In re Osteroots, 604 F.Supp 848
(D. N.D. 1984)

Bank, which held a security interest in all farm products, crops and products thereof, was entitled to the proceeds of corn received by debtors under federal payment-in-kind program, since the PIK payments were received as a substitute for corn the debtors would otherwise have planted.

In re Twin Valley Seed Co.,
53 B. R. 592 (Bankr. D.N.D. 1985)

Secured party's interest in crop assignments was not perfected by seed company's taking possession of seeds.

In re Kingsley, 73 B. R. 767
(Bankr. D.N.D. 1987)

Security agreement in "Crops" and "Proceeds" was invalid.

In re Rolain, 823 F. 2d 198
(8th Cir. 1987)

Debtor's attorney was valid bailee/agent of creditor, and thus, creditor had a perfected security interest in collateral note which attorney received under

	written agency agreement with creditor.
<u>In re Wild</u> , 795 F.2d 666 (8th Cir. 1986)	Under North Dakota law, agricultural lessors' interest in crops reserved in lease agreement was inferior to that of trustee in his status as hypothetical lien creditor.
<u>In re Cook</u> , 63 B. R. 789 (Bankr. D.N.D. 1986)	Under North Dakota law, debtor did not have sufficient interest in cattle kept on ranch to grant security interest therein.
<u>Carlson v. Tandy Computer Leasing</u> , 803 F.2d 391 (8th Cir. 1986)	Agreement between computer equipment lessor and debtor in bankruptcy was a pure lease, not a lease intended as a security interest.
<u>In re Nelson</u> , 45 B. R. 443 (Bankr. D.N.D. 1984)	Financing statements' misstatement of number of bushels of wheat covered by security agreements was not seriously misleading.
<u>In re Trestle Valley Recreation Area, Inc.</u> , 45 B. R. 458 (Bankr. D.N.D. 1984)	Lender's perfected chattel mortgage interest in ski lodge was adequate as against bankruptcy trustee's avoiding powers.
<u>In re Asbridge</u> , 45 B. R. 564 (Bankr. D.N.D. 1984)	Blanket security agreement signed by husband and wife extended to later advances, including short-term loans to husband only.

In re Cook, 52 B. R. 558
(Bankr. D.N.D. 1985)

"Leases" under which debtor rented irrigation equipment were in fact security instruments.

In re Galvin, 46 B. R. 12
(Bankr. D.N.D. 1984)

Federal agency did not properly perfect security interest in farm equipment or crop collateral under North Dakota law.

In re Gelking, 754 F.2d 778
(8th Cir. 1985)

Bank's security interest in debtor's airplane was perfected prior to date debtor filed for bankruptcy.

In re Nielsen, 48 B. R. 274
(Bankr. D.N.D. 1984)

Security interest in milk proceeds not affected by debtor's filing petition in bankruptcy.

In re Pigeon, 49 B. R. 657
(Bankr. D.N.D. 1985)

(Distinguishes Nielsen).

In re F. R. of North Dakota, Inc.,
54 B. R. 645 (Bankr. D.N.D. 1985)

Descriptions of secured collateral in bank's security agreement were insufficient to perfect bank's security interest.

Neu Cheese Co. v. Federal Deposit Ins. Corp.,
825 F.2d 1270 (8th Cir. 1987)

Bank waived its right in milk, which was collateral for debt, by failing to object to farmer's sale of milk to dairy on over 700 occasions and payment of the sale proceeds directly to farmer on over 100 occasions.

SECURITY INTEREST

Wegner v. Grunewaldt,
821 F.2d 1317 (8th Cir. 1987)

Secured party could, under South Dakota law, retain security interest by authorizing sale of the

secured property
conditioned on retention
of security interest in
the property.

SETTLEMENT

In re Ewing, 852 F.2d 1057
(8th Cir. 1988)

By virtue of terms of
settlement reached pending
appeal of Bankruptcy Court
finding that vehicle was
property of estate, appeal
could not be reinstated
upon failure to settlement
agreement to be
consummated.

SETOFF

In re Bohlen Enterprises, Ltd.,
859 F.2d 561 (8th Cir. 1988)

Bank in which funds were
deposited less than 90
days before debtor filed
for bankruptcy could not
exercise right of setoff
against the funds, and
thereby avoid treatment of
transfer as voidable pre-
ference, where the deposit
was not in ordinary course
of business and was for
purpose of creating right
of setoff.

In re Brittenum & Associates, Inc.,
868 F.2d 272 (8th Cir. 1989)

Securities broker's
certificate of deposit
and savings account were
not subject to bank's
right of setoff in broker's
bankruptcy proceeding, as
the CD and special account
were designated on their
faces as special reserve
accounts for the exclusive
benefit of customers.

SPECIFIC PERFORMANCE

In re Sunset Memorial Gardens, Inc., 49 B. R. 817
(Bankr. D.N.D. 1985)

Joint venture failed to establish it was entitled to specific performance of alleged agreement with debtor.

STAY

United Sav. Ass'n v. Timbers of Inwood Forest, ___ U. S. ___, 108 S. Ct. 626 (1988)

Undersecured creditors are not entitled to compensation under 11 U.S.C.A. § 362(d)(1) for delay caused by automatic stay in foreclosing on their collateral.

In re Maanum, 838 F.2d 991
(8th Cir. 1988)

Rehearing en banc was denied on panel determination that running of statutory time period for debtors to cure cancellation of contract for deed was not automatically stayed by filing of Chapter 11 petition, but rather was only temporarily stayed for 60 days..

Stone's Pharmacy v. Pharmacy Accounting Mgt., 875 F.2d 665
(8th Cir. 1989)

Bankruptcy stay did not apply to claim of customer (who bought computer system and maintenance agreement) against seller's asset purchaser under the Texas Bulk Transfers Act, even though the seller was in bankruptcy.

In re Easton, 882 F.2d 312
(8th Cir. 1989)

Order orally confirming Chapter 12 plan, provided certain amendments were made, impliedly barred creditor from proceeding with sheriff's sale, such that court could set

aside the sale once amendments were filed and a written confirmation order was entered.

In re Briggs Transportation,
780 F.2d 1339 (8th Cir. 1985)

"Adequate protection" does not entitle undersecured creditors as matter of law to interest payments from debtor to compensate them for lost opportunity costs due to delay in reinvesting collateral's liquidated value caused by automatic stay.

In re Wolsky, 53 B. R. 751
(Bankr. D.N.D. 1985)

Creditor was not entitled to relief from stay on ground it lacked adequate protection for its opportunity cost.

In re Ashton, 63 B. R. 244
(Bankr. D.N.D. 1986)

Absence of good faith in Chapter 13 filing and patently unconfirmable plan was sufficient cause for granting creditor with foreclosure judgment relief from stay.

In re Kerzman, 63 B. R. 393
(Bankr. D.N.D. 1986)

Debtors were not entitled to stay of sheriff's sale pending appeal of bankruptcy court order dismissing petition as filed in bad faith.

In re Binstock, 78 B. R. 994
(Bankr. D.N.D. 1987)

Creditor was entitled to relief from co-debtor stay in order to collect unsecured portion of debt from co-debtor.

In re Asbridge, 66 B. R. 894
(Bankr. D.N.D. 1987)

Adequate protection payments to compensate creditor for "lost opportunity" costs did

not have to begin until creditor could have sold collateral.

In re Schmidt, 71 B. R. 618
(Bankr. D.N.D. 1987)

Automatic stay did not apply to running of redemption period set by state court following Chapter 12 debtors' default under contract for deed.

In re Maanum, 828 F.2d 459
(8th Cir. 1987)

Running of statutory time in which debtors could cure cancellation of contract for deed was not automatically stayed by filing of Chapter 11 petition, but rather, was only temporarily stayed for 60 days.

In re Carver, 828 F.2d 463
(8th Cir. 1987)

Judicially decreed period of redemption in strict foreclosure action brought in state court against debtors, who had defaulted on contract for deed, was not automatically stayed when debtors filed their petition.

In re Martinson, 26 B. R. 648
(D.C. N.D. 1983)

Automatic stay provision of Bankruptcy Code did not operate to toll running of statutory redemption period provided under North Dakota law.

STIPULATIONS

In re Olsen, 861 F.2d 188
(8th Cir. 1989)

Chapter 11 debtors' confirmed plan was not "substantially consummated" so as to preclude

Bankruptcy Court from authorizing a change in the plan.

In re Gall v. South Branch

Nat. Bank of S. D.,
783 F.2d 125 (8th Cir. 1986)

Plaintiff was

estopped from asserting that bank or its officer converted money she and her husband gave officer in satisfaction of note, where she had entered into stipulation in prior bankruptcy proceeding admitting that spouses were liable on note.

In re Polries Bros., 49 B. R. 669
(Bankr. D.N.D. 1985)

Post-petition stipulation for adequate protection would be enforced.

STUDENT LOANS

U.S. Dept. of Health & Human Services v. Smith, 807 F.2d 122
(8th Cir. 1986)

Debtor physician's obligation incurred under Physician Shortage Area Scholarship Program was a nondischargeable "educational loan," even though repayment was contingent on debtor's failure to practice in a physician shortage area.

SUBORDINATION

In re Bellanca Aircraft Corp.,
850 F.2d 1275 (8th Cir. 1988)

Insiders' receipt of preferences, without more, was not the type of "inequitable conduct" warranting subordination

SUBSTANTIAL ABUSE

In re Walton, 866 F.2d 981
(8th Cir. 1989)

Chapter 7 case was properly dismissed on substantial abuse grounds.

In re Gaukler, 63 B. R. 224
(Bankr. D.N.D. 1986)

Debtors' Chapter 7 petition would not be dismissed for substantial abuse, though debtors claimed 10% of income for religious expenses.

In re Flatten, 50 B. R. 186
(Bankr. D.N.D. 1985)

Chapter 7 trustee could not avoid interests of vendors in bar and cafe.

In re Kress, 57 B. R. 874
(Bankr. D.N.D. 1985)

Debtor's petition was subject to dismissal for substantial abuse of Chapter 7.

In re Day, 77 B. R. 225
(Bankr. D.N.D. 1987)

Chapter 7 petition filed by debtor whose current monthly income was sufficient to fund Chapter 13 plan constituted "substantial abuse" of Code.

In re Dakota Lay'd Eggs,
57 B. R. 648 (Bankr. D.N.D. 1986)

Debtor, which was involved in production of eggs, was not a "farmer" and thus was subject to involuntary Chapter 7 proceeding.

In re Renner, 70 B. R. 27
(Bankr. D.N.D. 1987)

Granting debtors relief under Chapter 7 would not be substantial abuse of Bankruptcy Code in light of anticipated future medical expense.

In re Newsom, 69 B. R. 801
(Bankr. D.N.D. 1987)

Chapter 7 petition of two debtors, who had combined annual net income of nearly \$34,000.00 and no dependents, would be

dismissed on ground that granting relief would constitute substantial abuse.
of claims.

TAXES

In re Turner, 35 B. R. 811
(Bankr. D.N.D. 1983)
37 B. R. 376 (Bankr. D.N.D. 1984)

President of company held liable for income and withholding taxes not paid by company.

In re Skjonsby Trucking, Inc.,
39 B. R. 971 (Bankr. D.N.D. 1984)

Contributions to job service treated as tax.

In re Scherbenske Excavating, Inc.,
38 B. R. 84 (Bankr. D.N.D. 1984)

Security interest in accounts did not extend to tax refund; payment of taxes would constitute preference.

In re Turner, 43 B. R. 752
(Bankr. D.N.D. 1984)

District Court affirms decision of Bankruptcy Court.

TRUSTEE

In re Schauer, 835 F.2d 1222
(8th Cir. 1988)

Trustee takes subrights in property only to extent the debtor had them under state law.

In re Haugen Const. Service, Inc.,
104 B. R. 233 (Bankr. D.N.D. 1989)

Removal of bankruptcy trustee under reasonable trustee test was not warranted.

In re Endeco, Inc., 718 F.2d 879
(8th Cir. 1983)

Trustee's bond provided to an estate in reorganization was not one continuous contract over period of trusteeship but rather, bond was a separate contract for each year for which an

additional premium was paid, and thus bonding company was obligated to pay, up to the face amount of the bond, for defalcations of the trustee in each year.

In re Tweeten Funeral Home,
PC, 78 B. R. 998
(Bankr. D.N.D. 1987)

Trustee was entitled to quantum meruit trustee's fee of \$650, rather than requested fee of \$2,205.

TRUSTS

McMerty v. Herzog, 702 F.2d 127
(8th Cir. 1983)

Court imposed a constructive trust where property was acquired by the trustee in violation of his fiduciary duty to the estate.

McMerty v. Herzog, 710 F.2d 429
(8th Cir. 1983)

TURNOVER

Matter of Pester Refining Co.,
845 F.2d 1476 (8th Cir. 1988)

11 U. S. C. A. §542(a) providing for turnover of property of the estate, required pipeline company to turn over debtor-buyer's normal butane inventory even if the butane were subject to asserted carrier's lien.

In re NWFEX, Inc., 864 F.2d 593
(8th Cir. 1989)

Selling agent for debtors' money orders was not entitled to retain, as an exception to general rule of turnover, money refunded to purchasers of dishonored money orders by the selling

agent before agent received formal notice of debtors' bankruptcy filing.

In re Axvig, 68 B. R. 910
(Bankr. D.N.D. 1987)

Trustee was not entitled to turnover of cash in lieu of capital stock which Chapter 7 individual debtor's estate held in cooperatives.

VALUATION

In re Claeys, 81 B. R. 985
(Bankr. D.N.D. 1988)

Best evidence of what discount rate ought to be applied to secured claim to ensure that creditor receives value in allowed amount of its claim is what a similar loan would cost in marketplace.

VENDOR AND PURCHASER

In re Shuster, 784 F.2d 883
(8th Cir. 1986)

Assignees of vendors' interest in contract for deed perfected their interest by recording the assignment in office of county recorder in which property was located.

In re Progressive Farmers Ass'n,
829 F.2d 651 (8th Cir. 1987)

Under Missouri law, land contract vendors waived right to declare forfeiture based on purchaser's insolvency, where vendors failed to assert any ground other than non-payment in their notice of forfeiture and petition for reclamation.

VENUE

In re Greiner, 45 B. R. 715
(Bankr. D.N.D. 1985)

In case of suit to recover preferential payment, only venue available is district

court for district in which
creditor resides.

WILLFUL AND MALICIOUS INJURY

In re Hanson, 45 B. R. 60
(Bankr. D.N.D. 1984)

Collateral estoppel
prevented relitigation
or reconsideration of
issue of debtor's
willfulness and
maliciousness.